IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.168 of 1999

Sembulingam .. Appellant/Complainant

vs.

1.Paramasivam
2.Hari Govindan
3.Uthandi
4.Jayapal
5.Ramaiyan
6.Murugaiyan
7.Ramkarishnan
8.Ramlaingam
9.Balaiyan
10.Deivasigamani
11.Sembiyan
12.Ramachandran
13.Shanmugam
14.Ponnusamy
15.Ravi
16.Kumar
17.Sembulingam .. Respondents/Accused 1 to 5, 7,8,11 to 20

(Accused 6,9 and 10 are deceased)

Prayer: This appeal has been filed under section 378(4) of Criminal Procedure Code preferred against the Judgment dated 24.12.1998 in S.C.470 of 1992 on the file of the Assistant Sessions Judge, Virudhachalam.

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For Appellant : Mr.G.K.Ilanthirayan

For Respondents : Mr.Veera Kathiravan

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.470/1992 on the file of the Assistant Sessions Judge,

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Virudhachalam. This case has been filed as a private complaint by the complainant Sembulingam before the Judicial Magistrate, Neyveli, which was taken on file as PRC.No.6/1990. After furnishing copies to the accused under Section 207 Cr.P.C., the learned Judicial Magistrate has committed the case under Section 209 of Cr.P.C., to the Court of Sessions, since the case is triable by Sessions Judge.

2. The short facts of the case of the complainant in the complaint are as follows:-

2(a) Both the complainant as well as the accused are residing at Muthanai Village, Virudhachalam Taluk. On 18.05.1990 evening when the complainant's daughter-in-law went to the street tap to collect water, A8-Ramakrishnan picked up quarrel with the daughter-in-law of the complainant and at that time the complainant intervened and advised A8 not to quarrel and at that time A8 criminally intimidated the complainant and left the place.

2(b) On 19.5.1990 at about 8.45 am when the complainant was taking his breakfast with his family members at his house the accused with an intention to commit the offence of robbery assembled infront of the house of the complainant with deadly weapons and as per the directions of the first accused the other accused entered into the house of the complainant by forcibly open the door.

2(c) A1, A3, A4, A5, A7, A8, A10, A12 and A14 trespassed into the house and A3, A8 & A9 climbed the roof of the house and damaged the tiles, thereafter the complainant along with his son, daughter, Navammal and Loorthammal left the house in fear and went to the police station to prefer a complaint. When they ware nearing Arachumi bus stop again the accused wrongfully restrained the complainant and his family members and criminally intimated and assaulted the complainant and Navammal and Loorthammal and also pelted stones at the complainant's son Balakrishnan and also his daughter Chinnammal and they informed the witnesses Kamaraj, Balu and Venkataraman about the incident and as per their advice, they returned to the house to take along with them the villagers and they found 11 bags of cashewnut stored in their house were found missing. When they went to the police station A11-Ramalingam was found present in the police station and the Sub-Inspector of Police obtained signature in a blank white paper from the complainant and had sent him to the hospital for treatment and refused to send Loorthammal and Nagamal to the hospital and later he sent them also to the hospital for treatment and after complainant returned from the hospital, the Sub-Inspector of Police informed them that he had registered a case only against six persons and refused to register the case against the other accused. Hence the complainant has preferred a private complaint.

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2(d) A6, A9 and A10 died before the commencement of trial. Charges were framed under Section 148 IPC against A1 to A8 & A10 to A20 and under Section 323 IPC against A1, A4, A5,A7 & A17, and under Section 325 IPC against A6 and under Section 323 IPC against A2, A8, A11, A15, A16 & A20 and under Section 326 IPC against A8 and under Section 442 IPC against A5, A7, A8, A10, A12 & A14 and under Section 395 IPC against A1, A4, A5, A7, A8, A10, A12 & A14 and under Section 341 IPC against A2, A8, A11, A15 , A6 & A20.

3. When the above said charges were explained to the accused and when questioned the accused pleaded not guilty. The complainant was examined as P.W.1. P.W.1 has deposed that he and the accused were residing in the same village and few days prior to the occurrence A8 had picked up quarrel with the complainant's daughter-in-law, which was intervened by the complainant and he (P.w.1) had warned A8. On the next day at about 8.45 am the accused gathered infront of the house of the complainant and break open the door of the complainant's house and committed the robbery of 11 bags of cashewnut and some of the accused have claimbed on the top of the roof and had broken some of the tiles and when they were about to proceed to the police station to prefer a complaint near Arachuli bus stop the accused came there and assaulted them causing injuries on their person. On the basis of the complaint preferred by the complainant the Sub-Inspector of Police Oomangalam Police Station has registered a case in Cr.No.238/90 under Section 147, 323 & 325 IPC against A1 to A5 & A20. The case was committed to the Court of Sessions and after trial the said case ended in acquittal of all the six accused on 28.09.1993. Before the trial Court P.w.1 to P.W.8 were examined and Ex.P.1 to P.5 were marked. On the side of the accused, D.W.1 was examined and Ex.R.1 & R.2 and M.O.1 & M.O.2 were marked.

4. The complainant, as P.W.1, would depose that he his working at National Lignite Corporation and got retired. On 18.5.1990 his (P.W.1) daughter-in-law Palaniyammal entered into a quarrel with A8-Ramakrishnan while she was collecting pot water at the water tap and A8-Ramakrishnan had also scolded his daughter-in-law and thereupon the complainant went there and warned A8-Ramakishnan. A8-Ramakrishnan thereby retaliating and criminally intimidating that by next week he will see that the complainant and his family members were driven out of the village. On 19.05.1990 at about 8.00 am the accused 20 in number assembled in front of his house and at that time he along with his daughter Selvi, Chinnamal, Navammal, Loorthammal and his son Balakrishnan were sitting infront of his house taking breakfast, at the instigation of the first accused the other accused A1, A7, A12, A14, A5, A4, A3 broke open the door and A3, A19 & A18 climbed on the roof and smashed the tiles. A1, A7, A5, A12, A14, A4 & A10 have robbed 11 bags of cashewnut. P.W.1, thereafter, went to Arachuli bus stop along with his family members

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in order to prefer a compliant with the police. A1 along with other accused came there and assaulted him on the forehead of P.W.1. A7 had assaulted on the back side of the head with bamboo stick. A17 had assaulted him with bamboo stick on the temporal region. A5 had assaulted him on the right shoulder on the back and also on the right ankle. A4 had bet him on the back. When his brother-in-law's wife Navammal intervened A20 made an attempt to bet her with a bamboo stick and the same was prevented by her with hands. A6 as assaulted Navammal on the right hand. A8 has assaulted Loorthammal with rod on the right forearm. A9 had assaulted with a bamboo on the back and right thigh A5 had assaulted Loorthammal on the back and right thigh with bamboo stick A2 had assaulted on the back and A17 has assaulted on the back and thigh of Chinnasamy. A9, A11 & A13 have also pelted stones and the occurrence was witnessed by Kamaraj, Venkataraman & Balu. They went alongwith the village people into the house and saw the tiles were damaged by the accused and 10 bronze utensils, 10 eversilver utensils and 10 ½ bags of cashewnut were stolen. They went to the police station to prefer a complaint and Sub-Inspector of Police had bet him with a lathi and refused to take his complaint. He was sent to Government Hospital at Virudhachalam by police and that the doctor in the hospital had exmined him and treated him for the injuries he had sustained and that he had made arrangements to take photographs for the place and that he was in the hospital under treatment for nearly 21 days and that his son has sent telegram to the Chief Minister, Inspector General and Deputy Superintendent of police. Since the police failed to take action against the other accused he has preferred this private complaint. Ex.P.1 is his complaint.

5. P.W.2-Balakrishnan in his evidence would depose that P.W.1 is his father and occurrence had taken place on 19.5.1990 infront of his house. According to P.W.2 at the instance of A1, the other accused viz. Paramasivam, Balaiyan, Ramaiyan, Sembaiyan, Jeyapal, Oothatti, Ramakrishnan and Subramani, have broken the tiles and accused Ravi, Kumar and Balu have climbed on the roof and broken the tiles and accused Balaiyan, Sembaiyan, Subramani & Velaiyan have thrown away the utensils from the house and they also robed cashewnuts and other utensils, and that 20 accused came there with sticks and logs and accused Sembulingam had assaulted his father P.W.1 on his right knee and Jeyabal had assaulted with bamboo stick on the shoulder and accused Ramaiyan also bet with bamboo stick and accused murugaiyan on the back of the head with bamboo stick and accused Ponnusamy had bet on the right side of the forearm with bamboo stick and A17 bet P.W.1 and Navammal on the forehead and right thigh with bamboo stick and that Loorthammal was assaulted by accused Harigovindan, Shanmugam, Ramakrishnan & Sembulingam and that Ramakrishnan had assaulted with iron rod and accused Balaiyan, Subramani, OOthandi & Theivasigamani have pelted stones at him (P.w.2), Selvi and Chinnammal and that the accused have robed 10 ½

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bags of cashewnuts besides evesilver and bronze utensils worth Rs.5,000/- and that they went to the police station to prefer a complaint and that he was not allowed to enter into police station and only Navammal, Loorthammal and P.W.1 went inside the police station and P.W.1 was beaten up with lathi by Sub-Inspector of Police and after getting his signature in a white paper P.W.1 was sent to the Government Hospital for treatment and that he also gave telegram to higher officials including District Collector. Ex.P.2 is the copy of the telegram.

6. P.W.3-Loorthammal, an injured witness, would depose that P.W.1-Sembulingam is her maternal uncle and that P.W.2-Balakrishnan is the son of P.W.1 and one day prior to the occurrence there was clash between the accused and the complainant's party and on the date of occurrence the accused came to P.W.1's house and robbed 11 bags of cashewnuts and six accused bet P.W.1 and other accused Hari Govindan(A2) bet her(P.W.3) on the right hand with strick. A15 bet on the left shoulder with bamboo stick and accused A5-Ramaiya bet on the left ankle A9(deceased) Sivalingam bet on the shoulders. A11-Ramalingam bet on the right leg with stick, A8-Ramakrishnan bet with iron rod on the right hand and that she had sustained bleeding injuries and the accused have chased Chinnammal and Navammal and Selvi and driven out and she along with P.W.1 and P.W.2 and others went to the police station to prefer a complaint and P.W.1 gave complaint to the police and she was referred to Government Hospital for treatment.

7. P.W.4-Navammal would depose that she is related to P.W.1 & 2 and that Balakrishnan(P.w.2) had married her husbands sister and that on 19.05.1990 at about 8.55 am she came to the house of P.W.1, the complainant, and at that time the accused came to P.W.1's house and smashed the house and A3, A18 & A19 had climbed on the roof and broken the tiles and they also removed some utensils. P.W.1 to P.W.3 went to the police station to prefer complaint, at that time five persons assaulted P.W.1 and Loorthammal was assaulted by six persons. A6 and A20 have assaulted her with hand and bamboo sticks and due to the assault there was a fracture on her right hand. The accused have also pelted stone at Selvi, Chinnammal and Balakrishnan and Venkataraman, Balu and Pichamuthu came to the house and found 10 bags of cashewnuts were robbed by the accused and when they went to police station to prefer a complaint accused Gopal, Murugaiyan were in the police station and she along with Loorthammal and P.W.1-Sembulingam were sent to Government Hospital for treatment and that P.W.1 was in hospital as an inpatient for 21 days.

8. P.W.5-Pichamuthu would depose that on 19.05.1990 at about 8.50 am the accused assembled infront of the house of P.W.1 and they had thrown out P.W.1 and his family members from the house. Nine persons broke open the door and Ravi, Kumar and Uthanddi climbed

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the roof and had broken the tiles and the accused entered into the house of P.W.1 and robbed away with bags of cashewnuts and the complainant P.W.1 along with witnesses was proceeding to prefer a complaint, the accused waylaid P.W.1 and bet him with bamboo sticks and Loorthammal was attacked by six persons and accused Ramakrishnan attacked Loorthammal with an iron rod on the hands and two persons attacked Navammal and that Selvi, Chinnammal, Balakrishnan were chased and pelted with stones and that P.W.1 requested him to come and see his house and that on his request he along with Balu, Venkataraman, Kamaraj went to P.W.1's house and saw the tiles were broken and cashewnuts strewn all along the ground and some of the utensils were also found missing.

9. P.w.6 is the Doctor working at Government Hospital at Virudhachallam at the time of occurrence. He deposed that on 19.5.1990 at about 12.00 noon P.W.1 came to the house along with police memo for treatment to the injuries he had sustained and that on examination P.W.1 informed him that he was attacked by known persons with sticks on the same day at about 10.00 am and that on examination he could found the following injury:

i) On the right shoulder a lacerated wound measuring 1" X ½" X1/4"
ii) On the back side of the head an incised wound measuring 1" X 2"
iii) An incised wound on the right side of the fore head 2" x 1" x ½"
iv) Just above the injury No.3 an aberration measuring ¼" X ¼"
v) A contusion with a measurement of 1" x ½" on the upper arm
vi) A contusion measuring 2" x 2" on the right side of the back
vii) A contusion on the left knee

Ex.P.3 is the wound certificate issued to P.W.1 On the same date at about 1.10 pm he(P.W.6) had examined Loorthammal(P.W.3) and that on examination she informed him that six persons have attacked her on the same day. On examination, he found the following injury on her person:

i) A lacerated injury on the right forearm measuring 1" x ¼" x ½"
ii) A contusion measuring 2" x 1" on the right hand
iii) A contusion measuring 1" x 1" on the left hand
iv) A contusion measuring 1" x 1" on the left thigh
v) A lacerated injury measuring ½" x ½" on the right ankle.

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From from x-ray it was found that she had sustained fracture in the leg.

vi) Ex.P.4 is the wound certificate issued by him. On the same day he has also examined Navammal(P.W.4) for the injuries sustained in the same course and she had informed the Doctor(P.w.6) that she was assaulted by two known persons. Ex.P.5 is the wound certificate relating to P.W.4. P.W.4 has sustained (i) a contusion 2" x 2" on the right hand, (ii) A contusion measuring 2" x 2" on the right thigh and (iii) A contusion measuring 2" X 1" on the left thigh.

10. P.W.7 is the photographer, who had taken M.O.1 series are photos of the place of occurrence, and M.O.2 series are negatives.

11. P.w.8 is the then Sub-Inspector of police Oomangalam. He would depose that on 19.5.1990 P.W.1 came to the police station and preferred a complaint and on the basis of the P.W.1's complaint he has registered a case in Cr.No.209/1990 under various provisions of Indian Penal Code and that on the basis of the complaint he has laid a charge sheet against six persons before the Judicial Magistrate, Neyveli and that he does not know anything above the result of the said case.

12. On the above evidence when the incriminating circumstances were put to the accused, all the accused have denied their complicity with the crime. A1 was examined as D.W.1 on the side of the accused. Accused have not produced any documentary evidence. After going through the documentary and oral evidence, the learned trial judge has come to the conclusion that the charges levelled against the accused have not been proved beyond any reasonable doubt and consequently acquitted all the accused from all the charges levelled against them. Aggrieved by the findings of the learned trial judge the complainant has preferred this appeal.

13. Now the point for determination in this appeal is whether the guilt against the accused has been proved beyond any reasonable doubt?

14.The Point:-

14(a) There was a police complaint preferred by P.W.1 in respect of the same offence against A1 to A5 an A20. This fact was spoken to by P.W.8, the Sub-Inspector of Police Oomangalam Police Station. D.W.1 is A1. In his evidence D.W.1 would admit that a criminal case was filed against him and 5 other accused on the basis of the complaint preferred by P.W.1 and the same was ended in acquittal.

14(b) The learned counsel appearing for the respondent relying on Section 300 of Cr.P.C contended that this criminal

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private complaint is not maintainable in lieu of the earlier criminal case against A1 to A5 & A20 ended in acquittal and as per section 300 of Cr.P.C a person cannot be tried for the same offence twice. Section 300 of Cr.P.C. runs as follows:-

> i) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section(1) of section 221, or for which he might have been convicted under sub-section (2) thereof.
>
> (ii) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.
>
> (iii) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such lastmentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.
>
> (iv) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
>
> (v) A person discharge under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.
>
> (vi) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.
>
> *Explanation:-* This dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purpose of this section.

The learned counsel for the appellant relying on Section 300(4) of Cr.P.C and also Illustration(f) to Section 300 of Cr.P.C, contended that a person acquitted of any offence constituted by any act may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the

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same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged. But the appellants cannot take shelter under section 300(4) of Cr.P.C. because the main charge against the accused is under Section 395 IPC for having robbed 11 bags of cashewnuts from the house. Even before the trial Court it has been proved by the accused that on the date of occurrence there was no stock of 11 bags of cashewnuts in the house of P.W.1.

14(c) Further, the learned counsel appearing for the respondent has drawn the attentions of this Court to the evidence of P.W.1 in the cross-examination, but would admit that he had filed petition to declare him as an insolvent. The very fact that P.W.1 has initiated proceedings under the Insolvency Act to declare him as an insolvent itself will clearly go to show that he has no immovable or movable property of his own. Apart from this, the evidence of the doctors who have examined the injured witnesses in this case were also very relevant for the purpose of coming to a conclusion that whether the occurrence would have occurred as projected by the complainant (P.W.1). P.W.6 is the doctor, who had treated P.W.1 on 19.05.1990 at 12.00 noon. Before the doctor, P.W.1 has stated that he was assaulted by known persons. Another injured witness P.W.3-Loorthammal has stated before the same doctor, who had treated her on the same day at about 1.10 pm, that he was assaulted by six known persons. The other injured witness Navammal, who was examined as P.W.4 has stated before the doctor P.W.6 that she was assaulted by two persons. Hence, the statement of P.W.1, P.W.3 & P.W.4, injured witnesses, before the doctor P.W.6, who had treated them after the occurrence, caused a cloud on the case of the complainant as to the fact that the occurrence would not have occurred as narrated in the complaint by P.W.1. Even though specific overtact has been attributed to the accused individually, there is no cogent, convincing and corroborative evidence at the earliest point of time before the doctor P.W.6 by the injured witnesses to connect all the accused into the crime. The learned trial judge has come to the correct conclusion that the complainant has failed to prove the guilt of the accused and has come to the correct conclusion that the quilt against the accused have not been proved beyond any reasonable doubt. During the trial of the police case against A1 to A6 there was no application filed by P.W.1 herein for joint trial of this case along with the other case under Section 210 of Cr.P.C. Section 210 of Cr.P.C. runs as follows:-

> Procedure to be followed when there is a complaint case and police investigation in respect of the same offence:-
>
> i) When in a case instituted otherwise than on a police report(hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the

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course of the inquiry or trial held by him, that an investigation by the police is progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(ii) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(iii) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

Under such circumstances, I am of the considered view that the judgment of the trial Court is neither infirm nor illegal to warrant any interference from this Court. Point is answered accordingly.

15. In the result, the appeal is dismissed confirming the judgment in S.C.No.470/1992 on the file of the Court of Assistant Sessions Judge, Virudhachalam.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
1.The Assistant Sessions Judge, Virudhachalam.
2.-do- the Prl. Sessions Judge, Cuddalore.

+1cc to Mr.Veera.Kathiravan, Advocate Sr 9318
+1cc to Mr.G.K.Ilanthirayan, Advocate Sr 9327

MS (CO)
km/28.2.

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